S.B.Civil Writ Petition No.4130/2007

Vishram & Ors.

vs.

The District Collector, Banswara & Ors.

Date : 18.7.2007

HON'BLE MR. PRAKASH TATIA, J.

Mr. GR Punia, for the petitioners.

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Heard learned counsel for the petitioners.

It appears from the facts of the case that the proceedings for taking possession back from the persons, the alleged encroachers, under Section 183B of the Rajasthan Tenancy Act, 1955 were initiated by the present petitioner no.1 against the respondent no.3. The Tehsildar, Banswara passed the order on 13.7.2005 rejecting the application but while rejecting the application under Section 183B about removal of encroachment, directed that the land may be recorded as such in the revenue record. All the petitioners preferred appeal against the said order before the District Collector, Banswara. The District Collector remanded the matter back to the Tehsildar after setting aside the order dated 13.7.2005. The learned District

Collector also directed that the land which is in possession of the respondent and which is of the appellants may be taken back from the respondent and be handed over to the appellants. The order of the District Collector was challenged by preferring revision petition before the Board of Revenue. The Board of Revenue dismissed the revision petition vide order dated 27.7.2006. To challenge the said order, present respondent No.3 Vimal Kumar preferred S.B.Civil Writ Petition No.5121/2006. In the said writ petition, the present petitioners, who were respondents therein, took a stand that said Vimal Kumar is already in possession of the land measuring 416 square yards and which is the land converted from agriculture to abadi land. This Court by its order dated 4.1.2007 observed that for rest of the land, there is no need for any interference. Meaning thereby, said Vimal Kumar's land was held to be 416 sq. Yards.

According to the petitioners, the petitioners already shown in writ petition no.5121/2006 that respondent Vimal Kumar had 416 square yards of the land and he is already in possession of the land still respondent Vimal Kumar submitted an application before the District Collector and sought order for possession of more land in the garb of the order passed by this Court in writ petition no.5121/2006 and on the said application, the order has been passed and possession

was handed over to respondent Vimal Kumar by Tehsildar, Banswara for which a report was prepared and copy of which is Annex.24.

Learned counsel for the petitioners submit that the petitioners have been dispossessed from their land and, therefore, in this writ petition, the petitioners sought relief of setting aside of the report dated 12.2.2007 and sought relief of measurement of the entire land and for delivery of possession of 500 square yards land to the petitioners.

I considered submissions of the learned counsel for the petitioners and perused the record as well as the orders passed by the various authorities.

It is clear from the fact mentioned in the order of this court in S.B.Civil Writ Petition No. 5121/2006 dated 4.1.2007 that the respondent's claim was in relation to only converted land which was converted vide order dated 24.3.1989. For this land, the petitioner has no claim, is admitted position. In the site report of the Tehsildar dated 12.2.2007, it is clear that the land of 416 sq. yards which was converted alone was handed over to the respondent.

If in the garb of said order, any excess land or

any other land has been delivered to the respondent then that cannot be adjudicated here in writ jurisdiction because of the reason that it involves disputed questions of fact which can be proved only by evidence and that can be done by filing regular suit in Civil Court as land is said to be abadi land.

In view of the clear mention in the site report dated 12.2.2007 (Annex.24) that the respondent was handed over possession of only converted land, I do not find any justification in interfering in the impugned order.

Accordingly, this writ petition, having no merits, is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya